

Exhibit No. 1Date 3-18-09Bill No. SB 183*Sen. Bulzant*

## Fiscal Note SB 183

The Fiscal Note for SB 183 contains significant errors, both in what is included and what is omitted.

It is well-known in legislative circles that a Fiscal Note on a bill is used as a weapon by state agency personnel providing information that forms the basis for the Fiscal Note. The information for this clearly hostile Fiscal Note was provided primarily by the Montana Department of Fish, Wildlife and Parks (FWP), an agency with a demonstrated bias to maintain the current FWP-directed process with wolves.

While FWP has long claimed that it has no choice but to go along with whatever the federal government wants about wolves, FWP has so supported the establishment of wolves in Montana that it has actually had to reject legislative direction and authority (e.g., 87-1-217, HJ 32-2003) in order to assertively support federal plans for wolves in Montana.

For example, FWP entered into a cooperative management agreement with the U.S. Fish and Wildlife Service in attempt to bind Montana to a level of wolf tolerance not supported politically in Montana. To accomplish that, FWP acted without authority from the Legislature, and specifically rejected legislative direction given in one or more resolutions or bills passed by the Legislature.

This agency, hell-bent on aiding the federal government to establish wolves in Montana and willing to ignore legislative direction to do so, is the same agency responsible for providing the heavily biased and pejorative information contained in the Fiscal Note for SB 183.

With that bias of the agency providing the information for the Fiscal Note in mind, let us consider the omissions in the Fiscal Note.

### **Errors of omission**

**Legal costs associated with SB 183.** Much is made in the Fiscal Note of the need to spend large sums of money to implement provisions of SB 183 that may require legal work. Notwithstanding what the Fiscal Note claims, only one lawsuit is required. That lawsuit is one required of the Attorney General to seek restitution for damages incurred by Montana from federally-protected wolves.

There are 252 attorneys employed within the executive branch as of 1-15-09. (Information from Beth Strandberg of the State Human Resources Division, Department of Administration.) Probably 50 or more of those attorneys are believed to be employed by the Montana Department of Justice. It is incomprehensible that with 252 attorneys on staff the State of Montana must retain outside legal counsel to pursue one lawsuit.

**Restitution.** SB 183 requires the Attorney General to file a lawsuit against the U.S. for restitution for damages caused by federally-protected wolves. The proper venue for such a lawsuit is the U.S. Court of Federal Claims (Court of Claims), as specified in SB 183, an entirely separate judicial system in the U.S. established for exactly this purpose. The Court of Claims is capable of and does make significant awards for damages caused by the federal government.

For example, in *Hage v. United States* (Case No.: USCC91-1470L), the Court of Claims recently awarded Hage \$4.2 million plus attorneys' fees and costs because the U.S. Forest Service attempted to deny Hage water and water rights for Hage's Nevada ranch. See: [http://www.stewards.us/hage\\_v\\_us/Hage%20Final%20Decision%206-6-05.pdf](http://www.stewards.us/hage_v_us/Hage%20Final%20Decision%206-6-05.pdf)

So, not only is substantial restitution possible, but awards may cover attorneys fees and costs.

The estimates about how many elk are killed per wolf per year vary from a low of 25 to a high of 80 or 100 when including "sport killing" (a documented phenomenon whereby wolves kill for fun, or just because they can, but not for food). Although a number such as 60 or 80 per year per wolf are suggested by Professor Ballard's studies from Alaska, let us suppose a more modest number of 40 elk per year.

The value of an elk is established in Montana by 87-1-111, MCA, as \$1,000. This number is in statute because it has been argued by the Montana Department of Fish, Wildlife and Parks as the approximate investment in and replacement cost for each elk. Because this value is established in statute and is rationally arrived at, it can probably be used to fix the value of elk for purposes of a restitution claim.

There are currently estimated to be about 500 wolves roaming Montana. 500 wolves times 40 elk times \$1,000 equals \$20 million in just one year. This does not include losses of moose, sheep, goats, deer and other wildlife lost to wolves. Nor does it include livestock lost to wolves, decreases in income for guides and outfitters, income lost to local communities because of reduced hunting opportunity, or lost economic activity associated with hunting. When all of these losses are calculated and added in, the cost of wolves to Montana is probably three or four times the cost of elk alone. Let us be modest and assume \$60 million.

Also, consider that restitution is claimed in SB 183 ever since the first date by which Montana was promised that wolves would be delisted and turned over to State control for management, January of 2001. It is documented that wolf population numbers in Montana have been increasing at a rate of about 34% per year. If we suppose that 2008 costs from wolf damage were \$60 million and regress that consistent with known wolf population growth, that indicates a cost of \$45 million for 2007, \$33.75 million for 2006, \$25.3 million for 2005, \$19 million for 2004, \$14.24 million for 2003, \$10.68 million for 2002, and \$8 million for 2001. That adds up to \$216 million for past loss only.

Consider that such a lawsuit would likely not be resolved by the end of the current biennium, and that wolves will propagate as they have historically in Montana and they have in Alaska and Canada in studies that concur about their population expansion rate of 34% per year. In 2009, the cost to Montana can be deduced to be \$80.4 million, and in 2010 will be 107.74 million. Thus, by the end of the coming budget cycle, the potentially reimbursable cost to Montana of loss from wolves will have been over \$404 million.

In it's portion of the Fiscal Note on SB 183, speaking of this legal challenge, Department of Justice says, "It is assumed that these challenges will be resolved favorably to the state." If that assumption is correct, then an award by the Court of Claims will cover legal costs and will also generate \$404 million in restitution for losses to wolves. This number should have been included in the Fiscal Note.

**Personnel working on wolf management.** The portion of the Fiscal Note written by FWP claims that FWP will need to hire NINE FTEs to implement the provisions of the bill. FWP estimates an average cost of about \$40,000 per FTE. This is grossly incorrect. FWP currently has 16 FTEs assigned to wolf management. Section 13 of HB 183 specifically prohibits FWP from spending any state resources for wolf management during any period that wolves are non-compliant with Montana wolf policy (as stated in the bill and as they are now). Not only would FWP NOT need to hire the proposed 9 new FTEs, FWP could give up the 16 FTEs now working on wolves. If these 16 are paid similarly to those FWP proposes to hire, that would save the State \$640,000.

Thus, the Fiscal Note should show a benefit of \$640,000 for FWP.

**Avoided costs.** What about the costs to Montana if SB 183 is not enacted? From the discussion under Restitution above, it is readily apparent that the presence of wolves burdens Montana with a heavy price, very possibly as much as \$187 million over the next two years alone. Shouldn't the cost of inaction be included in the Fiscal Note. Although these costs may not show up in the state budget, they are a very real price that the people of Montana must pay because they are forced to host and tolerate wolves.